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No. 84-506

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In The

Supreme Court of the United States

October Term, 1984

METROPOLITAN HOSPITAL,

Petitioner,

vs.

PROVIDER REIMBURSEMENT REVIEW BOARD OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, THOMAS M. TIERNEY, JAMES HOUDEK, JR., AND BETTE A. KRAUS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

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STATEMENT OF THE ARGUMENT RAISED BY RESPONDENTS

Respondents state that Congress amended the Medicare statute "revamping" the manner of payment for hospital services and that the new prospective payment system will be phased in

over the three years following October 1, 1983. Respondents raise an argument that decisions involving the original statute "appear to have only limited significance for the future." (Br. in Op.. 7-8). Contrary to this contention, the issues involved in this case are substantial and extend far beyond the Medicare Act.

ARGUMENT

I.

The issues presented have far-reaching administrative agency law consequences.

The deference to be accorded to an agency's interpretation of its regulations is presented by a multitude of administrative agency cases. The deference required is not total. The courts are not bound to accept an interpretation of a regulation which is at odds with congressional intent and the clear language of the regulation. The standard applied by the Third Circuit, and those circuits in accord, raises deference to an administrative interpretation to a level which is contrary to the opinions of the United States Supreme Court. *Compare United States v. Pennsylvania Industrial Chemical Corp.*, 411 U.S. 655, 674 (1973); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). Deference does not mean abdication of judicial responsibility to review agency action under the regulations promulgated. The interpretation must be examined in light of the language of the regulation. The words must be reasonably susceptible to the construction placed upon them by the agency, both on their face and in light of their prior interpretation and application. The interpretation must sensibly conform to the purpose and wording of the regulation. The deference articulated by the instant case will result in abdication of judicial responsibility to prevent arbitrary bureaucratic action and will have far-reaching administrative law consequences.

II.

The issues presented are of substantial importance in the administration of Medicare law.

The instant suit is representative of a substantial number of cases pending in the lower courts and a large number of cases yet to be filed.[1] Accordingly, even the narrow issues presented by the instant case are of substantial importance to the proper administration of the Medicare law throughout the United States for many years to come. *See The Colony, Inc. v. Commissioner,* 357 U.S. 28, 32 (1958) (certiorari granted because the question remains one of substantial importance in the administration of the law for the earlier years).

There are compelling reasons for this Court to reestablish definitive guidelines as to the degree of deference to be accorded administrative agency interpretations.

CONCLUSION

For all the reasons set forth, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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1. Petitioner has two cases pending before the Board for fiscal years 1979 and 1980. The Board is awaiting the decision in this matter before proceeding further. In addition, counsel knows of cases in other jurisdictions working their way through the Board and the courts.